IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11058 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ROHITBHAI GANPATRAM PATEL - Petitioner(s)
Versus
RANJANBEN RAMESHCHANDRA PATEL & 4 - Respondent(s)

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Appearance :
MR TS NANAVATI for Petitioner(s) : 1,
MR DAXESH T DAVE for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR MR MENGDEY, AGP for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/03/2007

ORAL JUDGMENT

1. In this petition, the petitioner has challenged certain interim orders passed by the Board of

Nominees in a pending Lavad Suit No.1797/2001.

2. Shortly stated, controversy is with respect to residential premises situated at Vadaj area of city of Ahmedabad. The petitioner and the contesting opponent no.1 are relatives. The opponent no.1 happens to be wife of deceased brother of the petitioner. It is the case of the petitioner that he is the sole owner of the suit premises in which by way of permissive user, the deceased brother of the petitioner with his family was allowed to reside in three rooms on the ground floor portion of the house. The opponent no.1 however, claiming right, title and interest over the suit premises approached the Board of Nominees by filing Lavad Suit No.1797/2001. In the said proceedings filed on 7th November, 2001, the Board of Nominees passed an order on 9th November, 2001 issuing notice to the petitioner fixing the next date of hearing of the proceedings on 13th November, 2001 and also ordering opening of the main room on the ground floor of the suit premises in presence of the Court Commissioner and to draw an inventory of the furniture lying in the room and to put Seal of the Court thereafter. It was provided that to carry out these directions if the petitioner is not present, it would be open for the Court Commissioner to break open the lock. The said order came to be served on the petitioners at the about 9:15 pm on 9th November,

2001.

3. Though the next date of hearing of Lavad Case was fixed on 13th November, 2001 and accordingly notice to this effect was also served on the petitioner, suddenly on 12th November, 2001, an application came to be filed on behalf of the opponent no.1 herein urging the Board of Nominees to take up the proceedings for urgent consideration. Along with such an application, the opponent no.1 herein i.e. original plaintiff also filed an application dated 12th November, 2001 requesting the Board of Nominees to hand over the possession of the said main room on the ground floor of the suit premises to her. In this application she stated that she urgently needs to occupy the said room and that therefore, appropriate directions accordingly be issued. On that application, the Board of Nominees passed an order on 12th November, 2001 itself directing the Court Commissioner to break open the Seal of the Court and to hand over the possession of the room to the plaintiff i.e. opponent no.1 herein. It was at that stage that the petitioner approached this Court in the present proceedings making several grievances against the member of the Board of Nominees. It is contended that the proceedings themselves are not maintainable since it is not a dispute between the two Members of the Society. It is contended that opponent no.1 herein is not the

Member of the society and if there are any disputes in the family only proper course open would be to file civil suit. It is contended that the learned Member of the Board of Nominees had acted in haste and showed improper approach in entertaining the proceedings and also granting mandatory interim injunction under strange circumstances.

4. It was also submitted that in any case the possession of the main room on the ground floor could never have been handed over to the opponent no.1 herein that too without hearing the petitioner.

5. Learned advocate Shri T.S. Nanavaty appearing for the petitioner drew my attention to the affidavit in reply filed by the member of Board of Nominees in which it is conceded that the proceedings before the Board of Nominees are not maintainable.

6. On the other hand, learned advocate Shri Dave for the opponent no.1 opposed the petition and supported the orders under challenge.

7. By an order dated 26th November, 2001, Learned Single Judge of this Court while issuing notice in this petition stayed further proceedings in Lavad Suit No.1797/2001. This interim order continued from time to time and though no

specific further extension was granted when this Court admitted this petition by an order dated 5th February, 2002, it is not in dispute that presently also the Lavad proceedings have not proceeded any further. Learned advocate Shri Nanavaty for the petitioner also stated that by now the concerned member of the Board of Nominees no longer holds the position. Aversion of the petitioner to proceed further with the Lavad Suit before the concerned member of Board of Nominees therefore, no longer survives. He however, submitted that the mandatory interim order passed by the Board of Nominees on 12th November, 2001 is required to be set aside. Learned Counsel also submitted that the petitioner would be raising question of lack of jurisdiction before the Board of Nominees.

8. Now that the concerned member no longer holds the post of Board of Nominees, it would not be necessary to stay the Lavad proceedings any longer. However, if the petitioner so desires it would be open for him to request the Board of Nominees to decide the question of jurisdiction as a preliminary issue.

9. Question of legality of mandatory interim order dated 12th November, 2001 however, survives. The facts are eloquent. As noted earlier, on 9th November, 2001, the Board of Nominees while issuing notice in the proceedings called upon

the petitioner to respond on 13th November, 2001 and further passed an interim order directing the Court Commissioner to open the main room of the suit premises and to put the Court Seal back after making inventory. This order was served on the petitioner on the night of 9th November, 2001. Before 13th November, 2001 i.e. the returnable date without there being any further development, on a plain application filed by opponent no.1 herein, the proceedings were taken for further consideration. The application of the opponent no.1 seeking mandatory interim directions was also allowed ex-parte. The Court Commissioner was directed to open the Seal of the Court and to handover the possession of the main room on the ground floor of the suit premises to the opponent no.1. Neither in the application requesting the Court to take up the proceedings on 12th November, 2001 nor in the application filed by opponent no.1 seeking mandatory interim injunction any extraordinary urgency was made out. Unless there was some great urgency, it was not open for the Board of Nominees to take up the proceedings for consideration on 12th November, 2001 once when the petitioner was put to notice that further hearing of the case would take place on 13th November, 2001. Further, granting of mandatory interim injunction required strong reasons. Such reasons were neither existent nor recorded in the impugned order. On all counts therefore,

order dated 12th November, 2001 directing the Court Commissioner to handover the possession of the main room on the ground floor of the suit premises cannot be sustained, same is therefore quashed and set aside. It is further made clear that opponent no.1 herein i.e. original defendant shall not be disturbed from the possession of three rooms on the ground floor of the premises which she was occupying even before filing of the suit as admitted by the petitioner in the petition itself.

10. The opponent no.1 shall handover the vacant possession of the suit premises of the petitioner after removing her furniture if any by 30th April, 2007.

11. It is clarified that I have expressed no opinion on the question of jurisdiction of the Board of Nominees in entertaining the Lavad Suit.

12. Subject to above observations, the petition is allowed in part. Rule is made absolute accordingly. No costs.

Direct service to respondent no.1 is permitted

(Akil Kureshi,J.)

(raghu)